

THE STRUGGLE FOR JUVENILE JUSTICE IN HONG KONG 1932–1995

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Introduction

The historical development of Western juvenile justice is often portrayed as a story of continual reform, reflecting the struggle between three competing philosophical traditions.¹ The *punishment model*, arising from the principles of classical utilitarianism, considers that potential offenders should be deterred from committing crime by the threat of punishment. A key facet of this approach is that punishment should act not only as an individual deterrent, but also as a general warning to others who may be tempted to offend. It is argued that harsh punitive measures are therefore justified in the interests of social order.² The *justice model* similarly sees crime as a rational choice and favours retributive punishment, but considers that the punishment must be in direct proportion to the severity of the offence. This approach stresses that the legal rights of the individual must be protected within the judicial process.³ Finally, the *welfare model* embodies a variety of ideals including rehabilitation, treatment, and social reform. This approach, which views crime as a psycho-socially determined phenomenon, has gone through many changes over the past century dependent on the fashionable criminological theories of the day.

This article traces the struggle between the principles of punishment, justice, and welfare in the Hong Kong juvenile court from its inception in the early 1930s to the situation now in the mid 1990s. Parsloe⁴ argues that ideally there should be a balance between the three philosophies. It will be seen that in Hong Kong, as in the West, such a balance has seldom been achieved. Rather, the tendency has been for one or other philosophy to be dominant at any time, dependent on prevailing socio-political attitudes and circumstances. Currently the bias is towards the welfare approach. This is in contrast to the current situation in the West, where such an approach has been heavily criticised and fallen out of favour over the past twenty years. It will be argued that the welfare approach in Hong Kong is also open to significant criticism, particularly in the way in which the over-riding theme of serving 'the best

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¹ Allison Morris and Henry Giller, *Understanding Juvenile Justice* (London: Croom Helm, 1987).

² Philip Bean, *Punishment: A Philosophical and Criminological Inquiry* (Oxford: Martin Robertson, 1981).

³ Barbara Hudson, *Justice Through Punishment: A Critique of the 'Justice' Model of Corrections* (London: Macmillan, 1987).

⁴ Phyllida Parsloe, *Juvenile Justice in Britain and the United States: The Balance of Needs and Rights* (London: Routledge and Kegan Paul, 1978).

interests of the child' can be used to cloak intensifying control over young people's behaviour.

The early history of the Hong Kong juvenile court

The first juvenile court was established in Hong Kong in 1933, following the enactment of the 1932 Juvenile Offenders Ordinance.⁵ The ordinance sets out what Morris and McIsaac⁶ describe as a 'dual image approach' to the sentencing of juvenile offenders aged from 7 to below 16 years. The juvenile court was to be primarily a court of criminal jurisdiction (although it also exercises civil jurisdiction in care and protection cases) constituted 'to hear and determine' a charge against a child or young person of any offence other than homicide.⁷ Initial proceedings were to be adversarial, as in the adult court, including a simplified form of trial if the juvenile denied the charge. At the sentencing stage, however, juveniles were to be dealt with in a totally different way from adults. The sentencing decision was to be based on the principle of being 'in the child's best interests.' This phrase is obviously open to interpretation, but the implicit assumption was that the magistrate should consider the *welfare* of the child before passing sentence.⁸

The ordinance included a number of other more *justice* based clauses, laying down procedures for ensuring that juveniles understood the content of court proceedings and that their legal rights were protected. In addition, juveniles were to be separated from adults throughout the judicial process, with the provision of separate courts and separate detention facilities within the confines of both police and court buildings,⁹ as a safeguard against contamination by adult criminals. Access by the press and general public was also restricted, to shield juveniles from adverse publicity. I have described the 1932 ordinance in the past tense, but it remains in force even in the 1990s, with only minor amendments.

From its inception until 1945, little is known of the operation of the juvenile court because most of the records were destroyed during the second world war.¹⁰ However, by the late 1940s over 50,000 juveniles were appearing annually

⁵ Juvenile Offenders Ordinance 1932.

⁶ Allison Morris and Mary McIsaac, *Juvenile Justice? The Practice of Social Welfare* (London: Heinemann, 1978).

⁷ Juvenile Offenders Ordinance 1932 (note 5 above), revised edition 1974. There is little difference between the 1932 and 1974 editions.

⁸ *Ibid.* Undoubtedly this allowed individual magistrates to impose their own ideological understanding of what was best for the child. However, the importance attached to welfare factors in the sentencing decision is expressed more strongly in the early deliberations before the ordinance was passed. See Hong Kong Government, *Report on the Measures Required for the Institution of Juvenile Courts in Hong Kong* (Hong Kong: Government Printer, 1931).

⁹ Nevertheless the juvenile court may be housed in the same building or even room as the adult court, provided there is an hour gap between sittings.

¹⁰ W Mak, 'Reminiscence of Early Probation Work in Hong Kong' in *Probation and Corrections Division Open Day Special Issue* (Hong Kong: Government Printer, 1973).

before the new juvenile courts. The bulk of such young people were convicted of summary offences or trivial crimes such as spitting and illegal hawking, with less than 4 per cent convicted of more serious offences such as theft and robbery or what came to be known later as 'standard list' offences.¹¹ Given the widespread socio-economic deprivation during this period and the lack of welfare services, juvenile justice professionals¹² appear to have used the court as a 'safety net' to protect and help deprived youngsters.

The child-saving movement and the emergence of youth as a social problem

Hong Kong's traditional economic role up to the middle of the 20th century had been as an entrepôt for China and Southeast Asia. However, this role declined following the Communist take-over in China, and in the 1950s the territory developed as a major manufacturing centre.¹³ The rapid growth in the economy which followed was fuelled by a massive influx of immigrants from China. Nevertheless, little of the new-found wealth was redistributed, and social conditions were marked by poverty, slum housing, poor health care, and inadequate educational facilities, leading one writer¹⁴ to liken Hong Kong at this time to 19th century Dickensian England.

In the 1950s juvenile crime was not seen as a particularly serious problem, with the little that occurred being blamed on poverty and poor social conditions.¹⁵ However, concern was expressed about the plight of 'street children' left wandering the streets with little food and no educational or recreational provision while their parents worked long factory hours. Welfare services were mainly provided by the voluntary efforts of indigenous charities, overseas missionaries, and international relief organisations. But, faced with widespread poverty, these bodies could do little more than offer short-term humanitarian aid.¹⁶ In the case of children, this took the form of food, shelter, and basic educational and recreational facilities.

By the early 1960s welfare agencies had begun to note slight improvements in socio-economic conditions, and in particular an expansion of primary school places. Now community attention was increasingly drawn to 'the much more

¹¹ Director of Social Welfare, *Departmental Report 1948–1954* (Hong Kong: Government Printer), p 17. The term 'standard list' offences came into official usage in 1986 with the adoption of the Standardised Law and Order Statistical System.

¹² This term is used to describe the key personnel who work within the juvenile court such as the police, probation officers, and magistrates.

¹³ L N H Ng, 'History' in T L Tsim and Bernard H K Luk (eds), *The Other Hong Kong Report 1989* (Hong Kong: Chinese University Press, 1989).

¹⁴ Ian Scott, *Political Change and the Crisis of Legitimacy in Hong Kong* (Hong Kong: Oxford University Press, 1989).

¹⁵ Analysis of Social Welfare Department annual reports 1948–1959.

¹⁶ Catherine Jones, *Promoting Prosperity: The Hong Kong Way of Social Policy* (Hong Kong: Chinese University Press, 1990).

inflammable group of young people aged between 14 and 19 years.¹⁷ Youth crime emerged as a social issue with considerable public concern over the Ah Fei (teddy boy) problem and gang fights among young people. Conservative elements, mainly from the business community, demanded tougher, deterrent measures. However, the government working party investigating the problem took a more liberal stance, concluding that violent crime amongst young people had been sensationalised by the press and that existing correctional measures were more than adequate. It advised against suggestions to shame and deter young offenders by 'shaving their heads' and 'setting up a labour camp,' as such measures were likely to harden 'those guilty of anti-social behaviour into becoming resentful and persistent criminals.'¹⁸

Nevertheless, serious riots in 1966 and 1967 appeared to confirm fears about the 'inflammable' nature of youth, as many participants were young people.¹⁹ Inevitably conservatives blamed the riots on inadequate discipline and moral training amongst youth. However, the more liberal participants (mainly social workers and educationalists) in the commission of inquiry investigating the causes of the riots argued that the rioters were ordinary young people whose immediate involvement stemmed from boredom and a search for excitement. Besides citing other socio-economic grievances they noted 'a growing sense of frustration' among young people 'at their limited chances in life and the apparently wide gap between their aspirations and their achievements.'²⁰

Hence, by the end of the 1960s, a version of Merton's²¹ strain theory prevailed in liberal circles, interpreting delinquency as a consequence of inadequate legitimate socio-economic opportunities and young people's frustrated aspirations. Although conservatives continued to call for stricter control of young people's behaviour, it was the liberal viewpoint which tended to have the greatest impact on official thinking and eventually led to the expansion of youth services and improvements in educational resources in the early 1970s.²²

¹⁷ Director of Social Welfare, *Annual Departmental Report 1963-4* (Hong Kong: Government Printer), p 9.

¹⁸ Hong Kong Government, *Report to the Governor in Council of the Working Party set up to Advise on the Adequacy of the Law in Relation to Crimes of Violence Committed by Young Persons* (Hong Kong: Government Printer, 1965), pp 4 and 14.

¹⁹ Not all the participants were youth, but the commission of inquiry paid particular attention to their contribution. This reflected growing concern in official circles about young people's behaviour and the subsequent construction of youth as a social problem in contemporary reports and documents. See Report of Commission of Enquiry, *Kowloon Disturbances 1966* (Hong Kong: Government Printer, 1967), *Annual Departmental Report 1963-4* (note 17 above), and *Report to the Governor in Council* (note 18 above).

²⁰ *Kowloon Disturbances 1966* (note 19 above), p 143.

²¹ Robert K Merton, *Social Theory and Social Structure* (London: The Free Press of Glencoe, 1957). Merton originally developed this theory to explain delinquency in the USA in the 1930s at a time of widespread economic hardship and large-scale immigration from Europe. It was transplanted into the Hong Kong context with little attempt to test it empirically or take account of cultural nuances. Merton postulated that delinquency could be prevented by social engineering rather than radical structural change. This was well suited to the socio-political climate in Hong Kong during this period and possibly accounts for its popularity.

²² See Hong Kong Government, *Social Welfare in Hong Kong: The Way Ahead* (Hong Kong: Government Printer, 1973).

The rehabilitative era

Throughout the socio-economic upheavals of the 1950s and 1960s, the core policies and programmes of the Hong Kong juvenile justice system were gradually set in place. Despite a rapid increase in the youth population,²³ there was a steady decline in the number of young offenders convicted in the juvenile court (falling from 37,231 to 11,044 between 1952 and 1968).²⁴ However most of this significant reduction was in 'summary offences.' The number of juveniles convicted of the more serious 'standard list' crimes fell only slightly and as a proportion of total convictions rose from 4 per cent in 1952 to 10.2 per cent in 1968.²⁵ Although the reason for this is not clear from historical evidence, it seems likely that as welfare, youth, and educational services developed in the 1950s and 1960s, the need for the juvenile court to act as a general 'safety net' for deprived youngsters gradually declined and the court could increasingly focus on the 'truly' delinquent.²⁶

The probation service was established in 1933, at the same time as the first juvenile court, to 'help, advise and befriend' young offenders. Initially it was run by the police and later, in 1938, by the Prisons Department. In 1948 the service was taken over by the Social Welfare Department and in 1956 extended to the adult court.²⁷ The probation service steadily expanded throughout the 1950s and 1960s; the number of new juvenile probation cases rose from 41 in 1953 to 549 in 1968.²⁸ In the 1950s, the philosophy of the probation service linked juvenile crime to poverty and environmental pressures.²⁹ However by the 1960s, the concept of rehabilitation had become a major theme; the 1969 Social Welfare Department Report described the work of the probation officer as involving 'the treatment of offenders through social work methods of counselling and the mobilisation of social welfare facilities.'³⁰

Juveniles could be required to reside for up to twelve months in a probation home as part of a probation order. The probation home doubled as a residential remand centre for juveniles awaiting trial or sentence, and as a place of detention to which juveniles could be sentenced for periods of up to six months upon conviction. In 1953 only eighty juveniles were placed in a probation

²³ David Podmore, 'The Population in Hong Kong' in Keith Hopkins (ed), *Hong Kong: The Industrial Colony* (London: Oxford University Press, 1971).

²⁴ *Departmental Report 1948–1954* (note 11 above), p 17; Hong Kong Government, *Annual Judicial Statistics 1968–69* (Hong Kong: Government Printer).

²⁵ *Ibid.* The proportion of juvenile offenders convicted of 'standard list' as opposed to 'summary' offences continued to rise throughout the 1970s and 1980s. In 1992 the figure stood at 63% (unpublished statistics provided by the Judiciary).

²⁶ Analysis of Social Welfare Department annual reports 1948–1969.

²⁷ Mak (note 10 above).

²⁸ Director of Social Welfare, *Departmental Reports 1948–1954 and 1968–69* (Hong Kong: Government Printer).

²⁹ Analysis of Social Welfare Department annual reports 1948–1960.

³⁰ Director of Social Welfare, *Annual Departmental Report 1969–70* (Hong Kong: Government Printer), p 11.

home on conviction, while by 1968 the figure had more than doubled.³¹ The concept of rehabilitation was also evident in the operation of probation homes, which the 1966 Social Welfare Department Report described as providing a 'semi-disciplined programme of social adjustment' when family circumstances were unsatisfactory, such that 'supervision alone might not succeed.'³²

The first boys' reformatory school was run by the Prisons Department but, after a short spell under the Salvation Army, was taken over by the Social Welfare Department in 1958.³³ There has never been a reformatory school for girls in Hong Kong.³⁴ The reformatory school philosophy was based on the principles of character development and social reformation, which were to be achieved through recreational, educational, and vocational training programmes designed 'to let the boys grow and develop in a fairly permissive, but reasonably controlled and disciplined atmosphere.'³⁵ The popularity of reformatory school training as a rehabilitative measure also increased significantly in the 1950s and 1960s, with juvenile residents increasing from 38 in 1958 to 167 in 1969.³⁶

The Prisons Department (renamed Correctional Services in 1982) also ran a number of correctional institutions for young offenders. The first training centre for boys aged 14 years and above was established in 1953. Although on paper there appears little difference between the training centre and reformatory school programmes, there is far greater emphasis on rehabilitation within a framework of hard work and discipline in the training centre. Male juveniles admitted to a training centre rose from 23 in 1958 to 106 in 1968.³⁷ The first girls' training centre was opened in 1969, and stressed the girls' future roles as wives and mothers.³⁸ Juveniles could also be sentenced to imprisonment, although in practice this was very uncommon.³⁹

Thus, by the late 1960s, Hong Kong had a well-established juvenile justice system. Vague notions of rehabilitation through counselling, social

³¹ *Departmental Reports 1948-1954 and 1968-9* (note 28 above).

³² Director of Social Welfare, *Annual Departmental Report 1966-7* (Hong Kong: Government Printer), p 21.

³³ Analysis of Social Welfare Department annual reports 1948-1960.

³⁴ The likely explanation for this is that fewer girls than boys appear in the juvenile court on criminal charges. Girls tend to be processed through care and protection proceedings because of behavioural problems (such as running away from home and being beyond parental control). A range of residential facilities exist for girls in this category within the welfare sector.

³⁵ Director of Social Welfare, *Annual Departmental Report 1969-70* (Hong Kong: Government Printer), p 13. Currently boys may be sentenced to reformatory school for an indeterminate period of between one to three years.

³⁶ Director of Social Welfare, *Annual Departmental Reports 1958-9 and 1969-70* (Hong Kong: Government Printer).

³⁷ *Ibid*; *Annual Departmental Report 1958-9*; Commissioner of Prisons, *Annual Departmental Report 1968-9* (Hong Kong: Government Printer). Currently juveniles can be sentenced to a training centre for an indeterminate period of between six months to three years with three years of after-care supervision upon discharge.

³⁸ In 1969 a new combined prison and training centre facility was opened for women and girls: Commissioner of Prisons, *Annual Departmental Report 1969-70* (Hong Kong: Government Printer).

³⁹ For example, in 1968 no juveniles were sentenced to imprisonment by the juvenile court: *Annual Judicial Statistics 1968-69* (note 24 above).

readjustment, character reform, hard work, and disciplinary training was the guiding philosophy. However, no substantive criminological research had been conducted in the Hong Kong context to provide scientific justification for this way of thinking.⁴⁰ In addition, it seems likely that, despite the humanistic concerns for the rehabilitation of young offenders displayed in Social Welfare and Correctional Services programmes, this was supplemented by an element of punitive deterrence. Perhaps this is not surprising, given the influence of prevailing conservative interests evidenced in the commission of inquiry into the 1966 riots.

The law and order era

In the early 1970s major changes took place in the socio-political life of Hong Kong society. The economic growth of the 1960s continued unabated, stemmed only briefly by the worldwide recession caused by the oil crisis in 1973. However, the riots of 1966 and 1967 had alerted the government to the need to open up communication between rulers and ruled and to improve the socio-economic conditions of the working population. A more 'consultative' style of administration was developed, which, while in no way intended to provide full-scale democracy, promoted some community participation in political affairs through the establishment of Mutual Aid Committees, Area Committees, and District Advisory Boards.⁴¹ The 1970s also saw the emergence of the Hong Kong equivalent of the welfare state. Housing, education, health, and social services, which the Governor described in 1973 as the 'four pillars on which the future well-being of our community can be built,'⁴² were rapidly expanded.⁴³

However, while these socio-political upheavals were taking place, the 1970s opened amidst a 'moral panic' about youth crime.⁴⁴ Official statistics apparently showed that violent crime amongst young people had reached 'startling proportions,'⁴⁵ though criminologists argued that the upsurge was something of a myth, which had been grossly exaggerated by higher reporting rates due to government-sponsored fight crime campaigns.⁴⁶

⁴⁰ Apart from the wholesale assimilation of Merton's strain theory (note 21 above).

⁴¹ Scott (note 14 above).

⁴² *LegCo Proceedings*, 17 October 1973, p 9.

⁴³ Nelson Chow, 'The Past and Future Development of Social Welfare in Hong Kong' in Joseph Y S Cheng (ed), *Hong Kong in Transition* (Hong Kong: Oxford University Press, 1986).

⁴⁴ Geoffrey Pearson, *Hooligan: A History of Respectable Fears* (London: Macmillan, 1983), uses this term to describe a period of time when the general public displace all their fears and uncertainties about socio-political conditions into a heightened concern over the behaviour of young people, who are then defined as a serious threat to societal values and interests.

⁴⁵ T S Lee, 'The Rise in Juvenile Crimes and its Implications' (1980) 14 *Hong Kong Journal of Social Work* 16–27.

⁴⁶ Henry J Lethbridge, 'Penal Policy and Crime Rates: Comments on the Hong Kong Experience' (1972) 2 *HKLJ* 52–68; Harold Traver, 'Crime and Socio-Economic Development in Hong Kong' in C K Leung, J W Cushman, and Wang Gungwu (eds), *Hong Kong: Dilemmas of Growth* (Hong Kong: Hong Kong University Press, 1980).

In the ensuing debates, liberals maintained the view that youth crime reflected inadequate socio-economic opportunities, while conservatives contended that the courts needed to adopt sterner measures to deter young people from crime.⁴⁷ A third, more justice-based argument appeared, propagated by lawyers who, in the interests of justice, advocated 'proportionality' in sentencing and better legal safeguards to protect young people appearing before the courts.⁴⁸ However until the mid 1970s, the 'law and order' solutions dominated the debate, and a series of tough deterrent measures were introduced to combat the youth crime problem.⁴⁹ The impact of this approach appears quite strongly in the sentencing practices of the juvenile courts in the early 1970s. Between 1970 and 1973 there was a noticeable drop in the use of probation, and a substantial increase in reformatory school and custodial disposals for juvenile offenders convicted of 'standard list' crimes.⁵⁰

The disciplinary welfare era

Despite a few minor economic downturns, the 1980s were a period of growing prosperity in Hong Kong.⁵¹ Government expenditure on health, education, housing, and social services continued to rise,⁵² and greater attempts were made to replace the 'consultative' style politics of the 1970s with a more democratic form of political representation.⁵³ Nevertheless, despite rising affluence and improvements in social welfare provision, an unprecedented upsurge in juvenile crime became a major source of community concern.⁵⁴

In his opening address to the Legislative Council in 1980, the Governor expressed his concern about the 'disturbing and bewildering' rise in juvenile crime.⁵⁵ Since 1974, the rate of juvenile crime had remained relatively stable, but between 1978 and 1980 it suddenly rose from 276 to 561 per 100,000.⁵⁶ At the beginning of the 1970s, public fears had mainly concentrated on acts of violence amongst young adult males. This time, however, community attention focused on juveniles involved in shoplifting, theft, small-scale robberies,

⁴⁷ Analysis of debates on youth crime in the Legislative Council. See *LegCo Proceedings* 1970 and 1971.

⁴⁸ Special Committee on Crime and Punishment of the Hong Kong Bar Association, *Fighting Crime: Comments on the Fight Violent Crime Campaign* (Hong Kong: Bar Association, 1973), p 11.

⁴⁹ *LegCo Proceedings*, 15 November 1972, pp 158–62. This included the introduction of detention centres in 1972 to give a 'short, sharp shock' to offenders of 14 years and over.

⁵⁰ Hong Kong Government, *Annual Judicial Statistics 1969–70 and 1973–4* (Hong Kong: Government Printer).

⁵¹ Richard Y C Wong and Joseph Y S Cheng (eds), *The Other Hong Kong Report 1990* (Hong Kong: Chinese University Press, 1990).

⁵² Nelson Chow, 'Social Welfare' in *ibid*.

⁵³ Scott (note 14 above).

⁵⁴ See Patricia Gray, 'Juvenile Crime and Disciplinary Welfare' in Harold Traver and Jon Vagg (eds), *Crime and Justice in Hong Kong* (Hong Kong: Oxford University Press, 1991) for a discussion of the extent to which this upsurge in juvenile crime was 'myth,' 'reality,' or 'moral panic.'

⁵⁵ *LegCo Proceedings*, 1 October 1980, p 22.

⁵⁶ Royal Hong Kong Police Statistician.

and minor assaults. This marked the beginning of a new wave of public concern about young people's behaviour. The juvenile crime rate rose more or less steadily throughout the 1980s, reaching a peak of 997 per 100,000 in 1987.⁵⁷ Since then there has been a slight downturn with the rate fluctuating between 850 and 956 per 100,000 in the 1990s.⁵⁸

Juvenile crime became a hot topic of research in the 1980s,⁵⁹ and this led to a significant change in the interpretation of its primary causes. Liberal concerns about inadequate socio-economic opportunities and conservative demands for greater deterrence were replaced by a new set of criminological considerations.⁶⁰ Delinquency was now portrayed as a behavioural problem caused by the breakdown or loosening of social bonds within the family and school, in the belief that, once young people became detached from these social institutions, they were likely to associate with undesirable peers, assimilate anti-social values, and ultimately become involved in a criminal lifestyle. To stop this chain of events, preventative measures within the young person's home, school, or leisure environment were recommended.

In an earlier article⁶¹ I describe this new approach as 'disciplinary welfare.' The welfare aspect seeks to help young people to sort out their problems and re-establish healthy bonds with family, school, and friends. However, the means used to achieve this objective also involves increased 'policing' of the juvenile's lifestyle and behaviour. This is evidenced by the setting up of outreaching and school social work teams in 1979,⁶² and their later expansion in the 1980s and 1990s.⁶³ These teams are intended to prevent anti-social and delinquent behaviour by developing programmes 'which will reach young

⁵⁷ Ibid.

⁵⁸ Census and Statistics Department, *Annual Digest of Statistics 1995* (Hong Kong: Government Printer).

⁵⁹ Hong Kong Government, *Report of the Working Group on Juvenile Crime* (Hong Kong: Government Printer 1981); Nelson Chow et al, *A Study of the Values, Leisure, Behaviour and Misbehaviour of the Youth in Tsuen Wan and Kwai Chung* (Hong Kong: District Board Working Group on Unruly Youths in Tsuen Wan and Kwai Chung, 1985); Nelson Chow et al, *A Comparison of Parental Supervision and School Education of Deviant and Non-Deviant Adolescents: A Follow-up Study of the Adolescents' Misbehaviour in Tsuen Wan and Kwai Chung* (Hong Kong: Tsuen Wan, Kwai Chung and Tsing Yi District Boards, 1987); Agnes Ng and Y Chung, 'Social Factors in Adolescent Deviant Behaviour in Hong Kong: An Integrated Theoretical Approach' (1988) 12 *International Journal of Comparative and Applied Criminal Justice* 27–45.

⁶⁰ Indebted to Hirschi's control theory and Sutherland's theory of differential association. See Travis Hirschi, *Causes of Delinquency* (Los Angeles: University of California Press, 1969) and Edward H Sutherland and David R Cressey, *Criminology* (Philadelphia: Lippincott, 10th ed 1978). Again these two theories were transplanted from the USA, despite the fact that by the 1980s both were subject to widespread criticism in the West. However, in Hong Kong they were wholeheartedly accepted as providing a novel interpretation of delinquency which readily matched Chinese cultural beliefs about the causes of deviant behaviour among young people.

⁶¹ Gray (note 54 above).

⁶² Social Welfare Department Green Paper, *Development of Personal Social Work Among Young People in Hong Kong* (Hong Kong: Government Printer, 1977).

⁶³ In 1981 school social workers provided service to 314,685 students in 297 schools. By 1995 this had increased to 448,449 students in 433 schools. Similarly in 1981 there were only eighteen outreaching social work teams, but by 1995 the figure had risen to thirty: Director of Social Welfare, *The Five Year Plan for Social Welfare Development — Reviews 1981 and 1995* (Hong Kong: Government Printer).

people at school, in their homes and in society at large.⁶⁴ Welfare objectives are the laudable and popular images being portrayed, but this undoubtedly shields more covert disciplinary regulation of young people's lives.

It would be expected that this new attitude to youth misbehaviour would also have a significant influence on the treatment of juvenile offenders once they were apprehended by the police. However, this is not immediately evident from legislation or departmental reports, or even from observation of court proceedings. Juvenile courts remained courts of criminal jurisdiction with the sentencing philosophy still embracing the long-standing aim of being 'in the child's best interests.' Although some existing programmes were expanded and new sentencing disposals made available,⁶⁵ vague concepts of rehabilitation continued to be the guiding philosophy.

Nevertheless, sentencing statistics for the 1980s indicate significant changes in the juvenile justice system. The number of juveniles convicted of 'standard list' offences who were given more lenient sentences such as bind-overs and fines more than halved between 1978 and 1987. Meanwhile the rate of admission to residential training and custody almost trebled.⁶⁶ However, the analysis of sentencing data offers little explanation for this phenomenon. Deeper insight can be gained by examining the sentencing process in action. My research in this area⁶⁷ found that the apparently harsher attitude of juvenile justice professionals in the 1980s did not reflect a more punitive approach to sentencing. Instead this attitude arose from the adoption of 'disciplinary welfare principles' in the sentencing decisions of the juvenile courts.

This research examines the operational ideologies or 'frames of relevance'⁶⁸ of juvenile justice professionals in Hong Kong, and the way in which such attitudinal 'mind sets' impact on the sentencing of juveniles. Although three

⁶⁴ Social Welfare Department White Paper, *Social Welfare into the 1980s* (Hong Kong: Government Printer 1979), p 19.

⁶⁵ (a) The Juvenile Offenders Ordinance was amended in 1983, but the difference between the revised version and the 1932 edition is hardly discernible.

(b) A new probation home was opened in 1984: Director of Social Welfare, *Annual Departmental Report 1985* (Hong Kong: Government Printer).

(c) The Community Service Order Ordinance was enacted in 1984 and a pilot scheme began in 1987: Social Welfare Department, *Community Service Orders Pilot Scheme — A General Outline* (Hong Kong: Government Printer, 1987).

(d) The main event of the 1980s was a review of Social Welfare and Correctional Services Department programmes for juvenile offenders conducted by the Fight Crime Committee. The result of this review was the establishment in 1987 of the Young Offender Assessment Panel, whose main role was to assist the courts in the sentencing of young offenders by providing a co-ordinated view of the most appropriate rehabilitation programme: Social Welfare and Correctional Services Departments, *Review of the Young Offender Assessment Panel Pilot Scheme* (Hong Kong: Government Printer, 1988).

⁶⁶ See Gray (note 54 above) for a discussion of sentencing trends in the 1980s and problems in interpreting the data.

⁶⁷ Patricia Gray, *Inside the Hong Kong Juvenile Court: The Decision-Making Process in Action* (Hong Kong: Resource Paper Series No 23, Department of Social Work and Social Administration, University of Hong Kong, 1994).

⁶⁸ Stewart Asquith, *Children and Justice: Decision-Making in Children's Hearings and Juvenile Courts* (Edinburgh: Edinburgh University Press, 1983).

main attitudinal 'frames of relevance' are identified, the 'disciplinary welfare' outlook is dominant.⁶⁹ It is argued that this approach uses information about the offence, criminal career, family instability, behaviour at school, attitude to work, leisure activities, and peer group attachments to judge the extent to which the juvenile has 'wandered off the right track' or deviated from a 'normal' lifestyle.

I suggest that the above judgements in effect form a *disciplinary welfare tariff*, and that sentencing recommendations and decisions result from matching the degree of behavioural decline with the appropriate level of corrective regulation. For example, a juvenile who is considered not to have wandered too severely off the right track would be a typical probation candidate, particularly where there are strong indications of renewed family support. Towards the other extreme, a juvenile who is judged as having a 'delinquent, wayward lifestyle' would probably be headed for a residential or custodial sentence. Hence, the main characteristic of the *disciplinary welfare tariff* is that the perceived disciplinary needs of the juvenile are a greater determinant of the sentence than the offence itself.⁷⁰

The modern Hong Kong juvenile justice system: progress or intensive regulation?

In the 1990s, the 'disciplinary welfare' approach continues to be seen by juvenile justice professionals in Hong Kong as the most progressive way of dealing with the problem of delinquency. This section will question just how progressive this approach is, and in particular will suggest that it carries with it a number of negative, albeit unintentional, consequences for young people. Many of these unfavourable impacts are similar to those of the 'punitive welfare' approach⁷¹ which followed the passage of the 1969 Children and Young Persons Act in England, and hence the discussion can be broadened by drawing on wider research from the UK.

The 1969 Act was based on an assumption that minor acts of delinquency were a normal part of growing up,⁷² while the small number of juveniles involved in more serious or persistent criminal activities were the victims of

⁶⁹ Gray (note 67 above) describes the other two tariffs as the *juridical tariff* and the *punitive tariff*, because the former is very similar to the 'justice' and the latter to the 'law and order' models of criminal justice.

⁷⁰ The adoption of 'disciplinary welfare' principles in Hong Kong both to explain delinquency and in sentencing decisions is undoubtedly influenced by cultural factors. Hong Kong Chinese child-rearing practices remain heavily impregnated with Confucian standards, as does the *disciplinary welfare tariff*. See Patricia Gray, 'Deconstructing the Delinquent as a Subject of Class and Cultural Power,' *Journal of Law and Society* (1997 forthcoming) for a more detailed discussion of how cultural factors are integrated into both the interpretation of delinquency and sentencing decisions in Hong Kong.

⁷¹ Howard Parker, Michael Casburn, and David Turnbull, *Receiving Juvenile Justice* (Oxford: Basil Blackwell, 1981).

⁷² Andrew Rutherford, *Growing Out of Crime: Society and Young People in Trouble* (Harmondsworth: Penguin, 2nd ed 1992).

deeper psycho-social disturbances.⁷³ Punishment was viewed as inappropriate. The Act therefore proposed three main policy changes. First, minor offenders were to be *diverted* from the criminal justice system by expanding police cautioning schemes. Second, efforts were to be made to *decriminalise* the acts of the more persistent offenders through the provision of a range of family-based treatment services.⁷⁴ These measures were to lead to the third over-riding change, to minimise the use of custody and segregation from the community, generally described as *deinstitutionalisation* and *decarceration*.⁷⁵

The 1969 Act in England did not lead to the changes intended by its architects. Police and magistrates were not convinced by the welfare ethos of the Act. Consequently an apparent dramatic increase in the rate of juvenile crime during the 1970s and a resultant 'moral panic' led to a strong 'law and order' backlash. Punishment principles were welded onto the welfare principles of the Act, resulting in a widening and strengthening of the influence of the juvenile justice system on the lives of young offenders.⁷⁶ This 'punitive welfare' regime in England led to negative consequences which show considerable similarity with the effects of the 'disciplinary welfare' approach in Hong Kong.

Widening the juvenile justice net

The 'diversionary' principle of the 1969 Act in England was expected to lead to an increase in police cautioning and a decrease in the number of juveniles prosecuted in the courts. However, research showed that both cautioning and prosecution increased dramatically.⁷⁷ This trend could not be explained by changes in the volume or severity of juvenile crime; rather the 'law and order' backlash encouraged the police to caution juveniles who would have previously been let off with an informal warning, whilst at the same time prosecuting those slightly more serious offenders who were the actual targets of diversion. Thus the juvenile justice system net widened to catch young people previously dealt with informally, and the caution became an alternative to an informal warning rather than to prosecution.⁷⁸

Hong Kong has similarly seen a dramatic increase in the rate of juvenile cautioning, from 89 to 340 per 100,000 between 1978 and 1989 (although in the 1990s it has declined).⁷⁹ Has net widening occurred in Hong Kong as a

⁷³ Michael Rutter and Henry Giller, *Juvenile Delinquency: Trends and Perspectives* (Harmondsworth: Penguin, 1983).

⁷⁴ Morris and Giller (note 1 above).

⁷⁵ David Thorpe, 'Deinstitutionalisation and Justice' in Allison Morris and Henry Giller (eds), *Providing Justice for Children* (London: Edward Arnold, 1983).

⁷⁶ Morris and Giller (note 1 above).

⁷⁷ David Thorpe, Dave Smith, Colin J Green, and John H Paley, *Out of Care: The Community Support of Juvenile Offenders* (London: George Allen and Unwin, 1980).

⁷⁸ Stanley Cohen, *Visions of Social Control: Crime, Punishment and Classification* (Cambridge: Polity Press, 1985).

⁷⁹ In 1987 58% of all offenders under 16 years were cautioned, but by 1990 this had fallen to 33%. The figure has since risen slightly and stood at 42% in 1993: Royal Hong Kong Police Statistician.

result of the 'disciplinary welfare' approach to juvenile crime? Unlike the UK experience, Hong Kong has seen a slight reduction in the rate of 'standard list' convictions in the juvenile court over the last decade,⁸⁰ suggesting that net widening has not occurred, particularly given the large increase in juvenile arrests over this period. Nevertheless, deeper examination of the research evidence raises doubts. If cautioning were working as intended one would expect to see a higher incidence of juveniles appearing before the courts for more serious crimes, with a large proportion having a caution for earlier offences. However, a recent study⁸¹ found that 70 per cent of juveniles appearing in the Hong Kong courts had never been cautioned and that most prosecutions were for quite minor offences. Therefore it may well be that 'disciplinary' concerns over the young person's unruly behaviour have been influencing cautioning decisions and that net widening has in fact occurred in Hong Kong.

Strengthening the juvenile justice net

If it is said that the 'punitive' and 'disciplinary' aspects of the juvenile justice philosophies in England and Hong Kong have led to net widening, then it may also be argued that the 'welfare' orientation of each country may have caused 'net strengthening',⁸² whereby the severity of the sentence is greater than the seriousness of the criminal record or the offence itself.

In England in the years after the 1969 Act research showed that the majority of juvenile offenders on supervision orders or in residential institutions were first offenders convicted of minor crimes.⁸³ Strongly influenced by a welfare philosophy, social workers and probation officers saw supervision and residential training not as a punishment for the offence, but as an opportunity to treat the juvenile's family, school, or peer group problems and so prevent further delinquency. This was despite the fact that research in the 1970s had shown that, although there may be an association between psycho-social problems and delinquency, it was not necessarily of a causal nature.⁸⁴ In addition, research indicated that there was no cure for delinquency whether treatment be in the community or by segregation.⁸⁵ These findings led to severe criticism

⁸⁰ 'Standard list' convictions fell only marginally between 1978 and 1989, from 227 to 214 per 100,000. However, there was a significant reduction in 'summary' convictions over this same period, from 383 to 180 per 100,000. This trend has continued in the 1990s: Hong Kong Government, *Annual Judicial Statistics 1977–1980* (Hong Kong: Government Printer). Statistics for the 1980s and 1990s provided by the Judiciary from unpublished data.

⁸¹ Jon Vagg, John Bacon-Shone, Patricia Gray, and Debbie Lam, *The Social Causes of Juvenile Crime: The Final Report* (Hong Kong: Government Printer, 1995).

⁸² Cohen (note 78 above).

⁸³ Morris and Giller (note 1 above).

⁸⁴ Rutter and Giller (note 73 above).

⁸⁵ D Lipton, R Martinson, and J Wilks, *The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies* (New York: Praeger, 1975).

of the welfare ideals of the 1969 Act and discrediting of social workers' claims to professional expertise in the assessment and treatment of delinquency.⁸⁶

In Hong Kong in the 1980s and 1990s, the decision to place juvenile offenders on probation or in residential training is made very early in their criminal careers, and often for quite minor crimes. My research⁸⁷ showed that in the 1980s some 83 per cent of juveniles placed on probation were first offenders, as were 59 per cent of those admitted to probation homes. Nearly 77 per cent of juveniles sentenced to reformatory schools had at most only one previous conviction. This trend has changed little in the 1990s, and the proportion of juvenile offenders sentenced to residential training continues to rise.⁸⁸ Recent Social Welfare Department research shows that almost 69 per cent of juveniles in probation homes are first offenders, with a further 23 per cent having only one previous conviction. Similarly 35 per cent of juveniles in reformatory schools had no previous convictions and 45 per cent had only one.⁸⁹

Turning to the severity of offences, research in Hong Kong⁹⁰ indicates that the majority of juveniles in probation homes and reformatory schools are guilty of only low-value property crimes. Even in the small percentage of crimes against people, serious violence or injury is almost non-existent, and most 'violent' crime by juveniles involves verbal threats and minor fist fights. The use of weapons is exceedingly rare. Thus, by current international standards juvenile offenders in residential institutions in Hong Kong are not hardened criminals and have had exceedingly short criminal careers.

There seems little doubt that this imbalance between the severity of the sentence and the severity or frequency of crime is due to the influence of welfare considerations. Despite the discrediting of the rehabilitative ideal in the West, welfare motives, with their emphasis on discipline and regulation, remain the dominant consideration in the sentencing of young people in Hong Kong.⁹¹ Juvenile justice professionals make use of the juvenile's appearance in court to treat his or her problematic behaviour. The more this behaviour reflects 'wandering off the right track,' the greater is the perceived need for more stringent measures to encourage a return to 'acceptable' behaviour. These measures are not seen as punishment, but as fulfilling the juvenile's need for social re-education.

⁸⁶ Michael King (ed), *Childhood, Welfare and Justice: A Critical Examination of Children in the Legal and Childcare Systems* (London: Batsford, 1981).

⁸⁷ Gray (note 67 above).

⁸⁸ Although the number of juveniles per 100,000 placed in probation homes and reformatory schools has slightly declined, as a proportion of all 'standard list' convictions, the use of residential training rose from 14% to 18.3% between 1989 and 1992: compiled from unpublished statistics provided by the Judiciary.

⁸⁹ Social Welfare Department, *Recidivism Study on Young Offenders* (unpublished departmental report, 1992).

⁹⁰ Gray (note 67 above) and Vagg et al (note 81 above).

⁹¹ Gray (note 67 above).

Custody remains

The 1969 Act in England was unsuccessful in reducing the number of juveniles given custodial sentences. In fact the opposite happened and such sentences soared in the late 1970s and early 1980s.⁹² A significant reason for this was undoubtedly the 'law and order' backlash in UK at the time.⁹³ This was given official backing by the 1982 Criminal Justice Act, which strengthened the power of magistrates to sentence juveniles to custody.⁹⁴ A further reason for the increased reliance on custody was an inevitable consequence of net strengthening. Once juveniles had been caught in the net, frequently for welfare reasons, re-offending caused them to move quickly up the sentencing scale and into custody. One study⁹⁵ described this as the 'vertical integration' of welfare and punishment, a phenomenon undoubtedly exacerbated by the fact that some 57 per cent of juveniles leaving residential institutions in the 1970s re-offended within two years.⁹⁶

In Hong Kong, statistical evidence also shows an increase in custodial sentencing for juveniles in the 1980s, although rates appear to have stabilised in the 1990s.⁹⁷ The reasons for this enhanced preference for custody are not obvious from the statistics. Juveniles sentenced to custody in Hong Kong generally have very brief offending careers. In 1995 nearly three-quarters of males under 20 committed to a training centre had only one or no previous convictions, and detention centre inmates displayed even less evidence of earlier offending.⁹⁸ As in the case of residential training, the severity of the juvenile's crimes gives little justification for the use of custody. In 1995 some 60 per cent of juveniles in detention centres and training centres were there for property crimes, and less than 10 per cent had committed 'crimes against the person'.⁹⁹ The research of Gray and Vagg et al¹⁰⁰ show that only a very small percentage of these crimes involved the theft of substantial amounts of money or were of a life-threatening nature.

Since juveniles in Hong Kong's custodial institutions can hardly be said to be hardened criminals, why are they there? In the 1980s and 1990s Hong Kong has not experienced the 'law and order' backlash which so influenced juvenile

⁹² Morris and Giller (note 1 above).

⁹³ Keith Bottomley and Clive Coleman, 'Law and Order: Crime Problem, Moral Panic, or Penal Crisis?' in Philip Norton (ed), *Law and Order and British Politics* (Aldershot: Gower, 1984).

⁹⁴ Norman Tutt and Henry Giller, 'Doing Justice to Great Expectations' (1985) 17 *Community Care* 20–3.

⁹⁵ Thorpe (note 77 above).

⁹⁶ NACRO, *Trends in Juvenile Crime: Crime and Sentencing Patterns and Statistics and Research* (London: National Association for the Care and Resettlement of Offenders, 1985).

⁹⁷ Although the number of juveniles per 100,000 sentenced to detention centres, training centres, or imprisonment has declined, as a proportion of all 'standard list' convictions, the use of custody rose from 10.9% to 11.9% between 1989 and 1992: compiled from unpublished statistics provided by the Judiciary.

⁹⁸ 80% of detention centre inmates under 24 had only one or no previous conviction: Commissioner of Correctional Services, *Annual Statistical Tables 1995* (Hong Kong: Government Printer).

⁹⁹ Ibid.

¹⁰⁰ Gray (note 67 above) and Vagg et al (note 81 above).

justice practices in the UK in the 1970s. Whilst some juvenile justice professionals in Hong Kong lean towards a punitive deterrent approach¹⁰¹ and media hype about juvenile crime may have had some effect, these are not adequate explanations.

A much more likely reason for sentencing a juvenile to custody is, as with net strengthening as a whole, 'disciplinary welfare' considerations. While some juveniles in Hong Kong may enter custody because of the serious nature of their offences or failure to comply with welfare measures, the majority enter, as my research illustrates,¹⁰² because their behaviour is seen to have deviated far from acceptable standards and requires intensive doses of disciplinary regulation. The choice of custody is an *extension* of the *disciplinary welfare tariff* rather than the merger of two tariffs as in England in the 1970s. Thus the custodial tariff is being used as yet another means, or possibly the excuse, to 'correct' the juvenile's non-criminal problems.

Back to justice

Much of the critical debate surrounding the implementation of the 1969 Act in England stemmed from arguments put forward by the 'back to justice' movement.¹⁰³ 'Back to justice' advocates criticised the 'law and order' approach for making the punishment of juveniles disproportionate to their crimes. The welfare approach was even more strongly attacked as infringing juveniles' civil rights. It was argued that when welfare considerations were taken into account, it was not just the offence which was scrutinised, but the juvenile's total social situation. Thus the juvenile was not only sentenced for the offence, but also for his or her problematic behaviour and social background. Morris and McIsaac¹⁰⁴ described this as grafting a '*tariff based on needs*' onto a '*tariff based on deeds*,' and concluded that 'children who offend require protection from the humanitarianism of social welfare.' Essentially, the 'back to justice' movement demanded a return to natural justice by strengthening the rights of juveniles against violation of their civil liberties.

In Hong Kong delinquency is attributed to a breakdown of social bonds. Juvenile justice personnel seek to repair these bonds by invoking, through the available sentencing disposals, a graduated continuum of supervisory, training, or disciplinary controls to get the juvenile to conform. Disciplinary factors often receive far greater attention than the juvenile's welfare needs, and there is little correlation between the severity of offence and the severity of sentence. Juvenile justice professionals assume that this 'disciplinary welfare' approach operates in the 'child's best interests,' and so scant consideration is given to

¹⁰¹ Gray (note 67 above) provides an analysis of the role of this approach in sentencing decisions.

¹⁰² Gray (note 67 above).

¹⁰³ Allison Morris, Henry Giller, E Szwed, and H Geach, *Justice for Children* (London: Macmillan, 1980).

¹⁰⁴ Morris and McIsaac (note 6 above), p 147.

protecting the juvenile's civil rights. 'Back to justice' arguments in the West have been strengthened by research evidence showing the failure of correctional programmes — whether based on welfare or punitive principles — to prevent young people from re-offending. Such an argument would be difficult to support in Hong Kong where the 'success rate' of Social Welfare and Correctional Services Department programmes is at the very high level of 70 to 90 per cent.¹⁰⁵

Nevertheless, one must ask whether Hong Kong's 'disciplinary welfare' approach reaches unnecessarily and unjustly into the lives of young offenders. Criminal career research in the West¹⁰⁶ has shown that most juvenile offenders stop offending naturally in late adolescence without any intervention by the justice system. Indeed it would appear that once juveniles get involved with the police and courts, they are more likely to commit further offences and develop a delinquent identity. No such research has been carried out in Hong Kong, but it could be argued that the low recidivism rate of Hong Kong's juvenile offenders may be due to 'growing out of crime' rather than the 'success rate' of correctional programmes.

Interestingly, Vagg et al's research¹⁰⁷ indicates that most of the psychosocial problems of young offenders in Hong Kong occurred *after* their first offence and sentence. Whilst it would be speculative without further research to conclude that Hong Kong's correctional programmes are therefore causing rather than solving problems, it is no weaker an argument than to hold that Hong Kong's currently low recidivism rate justifies high levels of intervention in the lives of young people. And if the high 'success rate' of Social Welfare and Correctional Services Department programmes is discounted, what justification remains for the infringement of civil liberties that accompanies a too pervasive justice system?

A time to rethink juvenile justice priorities

Dissatisfaction in England with juvenile justice policies in the 1970s and 1980s gave rise to a new 'frame of relevance' which Harris¹⁰⁸ terms the 'just welfare' approach. This orientation rests on two basic principles. First, although much juvenile crime is of a trivial nature, it infringes the rights of its victims and the community at large. An element of punishment should therefore continue.¹⁰⁹

¹⁰⁵ *Recidivism Study on Young Offenders* (note 89 above) and Commissioner of Correctional Services, *Annual Department Report 1994* (Hong Kong: Government Printer).

¹⁰⁶ David P Farrington, 'Human Development and Criminal Careers' in Mike Maguire, Rod Morgan, and Robert Reiner, *The Oxford Handbook of Criminology* (Oxford: Clarendon, 1994).

¹⁰⁷ Vagg et al (note 81 above).

¹⁰⁸ Robert J Harris, 'Towards Just Welfare: A Consideration of a Current Controversy in the Theory of Juvenile Justice' (1985) 25 *British Journal of Criminology* 31–45.

¹⁰⁹ Ray Jones, 'Justice, Social Work and Statutory Supervision' in Allison Morris and Henry Giller (eds), *Providing Criminal Justice for Children* (London: Edward Arnold, 1983).

However, the justice principles of 'proportionality' and 'minimum intervention' should guide the sentencing decision. Second, welfare services should be available to help young people in trouble, but such services must be separate from the justice system.¹¹⁰ The abuse of power and infringement of civil liberties should be avoided by not confusing the 'need' with the 'deed.'¹¹¹

The changing face of juvenile justice

Since the mid 1980s the juvenile justice system in UK has developed to encompass 'just welfare' principles, a move which has been consolidated with the establishment of the new Youth Courts following the 1991 Criminal Justice Act.¹¹² Three main developments are evident. First, support for police cautioning as the preferred means of dealing with juvenile offenders has strengthened, even for repeat offenders.¹¹³ The role of district juvenile bureaux, which monitor cautioning decisions, has also been boosted to guard against net widening.

Second, measures have been introduced to promote better inter-agency co-operation and more efficient management of the juvenile justice system. Multi-agency forums have been established to guide district level juvenile justice policies. This 'partnership' approach between justice and youthwork agencies aims both to prevent juvenile crime and avoid the unnecessary placement of young offenders in custody.¹¹⁴ Within departments, probation officers and social workers are discouraged from writing reports on minor offenders, and even in serious cases to concentrate on the offence rather than the juvenile's psycho-social problems.¹¹⁵ Welfare problems requiring intervention must be processed through care and protection proceedings, and separated from judicial measures to deal with the offence.

Third, there has been a dramatic decline in the use of residential training and custody with tight restrictions limiting the ability of the courts to hand out such disposals. Instead, resources have been re-directed into the expansion of community-based correctional programmes, providing an alternative to incarceration and minimising disruption of the juvenile's normal life in the community.¹¹⁶

¹¹⁰ John Pratt, 'Juvenile Justice, Social Work and Social Control: The Need for Positive Thinking' (1985) 15 *British Journal of Social Work* 1-24.

¹¹¹ Morris and McIsaac (note 6 above).

¹¹² Loraine Gelsthorpe and Allison Morris, 'Juvenile Justice 1945-1992' in Maguire, Morgan, and Reiner (note 106 above).

¹¹³ See Home Office Circular 59/1990, cited in NACRO Briefing Report, *The Home Office Circular on the Cautioning of Offenders* (London: National Association for the Care and Resettlement of Offenders, 1990), pp 2-3.

¹¹⁴ See NACRO, *The Role of Juvenile Justice Workers in Crime Prevention* and NACRO, *Reducing the Use of Custody for Young Offenders* (London: National Association for the Care and Resettlement of Offenders, 1991).

¹¹⁵ Peter Raynor, David Smith, and Michael Vanstone, *Effective Probation Practice* (London: Macmillan Press, 1994).

¹¹⁶ NACRO, *Community Provision for Young People in the Youth Justice System* (London: National Association for the Care and Resettlement of Offenders, 1993).

'Just welfare' in Hong Kong?

It has previously been argued that there are similarities between the 'punitive welfare' approach of the UK juvenile justice system in the 1970s and the 'disciplinary welfare' approach still predominant in Hong Kong today. The emergence of a 'just welfare' philosophy led to quite radical changes in England. Should and could a 'just welfare' approach be adopted in Hong Kong?¹¹⁷

Such a new 'frame of relevance' would require major changes in the attitudes of juvenile justice personnel. My research¹¹⁸ shows that, although in those courts that lean towards a judicial preference there is a degree of protection of the juvenile's civil liberties, generally an ethos of 'disciplinary welfare' remains the dominant influence on juvenile justice thinking in Hong Kong. Probation, residential training, and custody are seen as an opportunity to tackle the young offender's behavioural problems, with the result that such sentences are imposed very early in the juvenile's offending career, often for minor offences and for juveniles who have not previously even received a caution.

A 'just welfare' approach would require juvenile justice personnel to base sentencing decisions on the principles of 'proportionality' to the offence and 'minimum intervention' in the lives of young people. Given the trivial nature of much juvenile crime, this is likely to reduce the number perceived to be in need of statutory intervention. Similarly, it follows that a clear distinction must be drawn between discipline and welfare. Family problems, difficulties at school or work, or associating with 'undesirables' must be dealt with through voluntary counselling or, in serious cases, through care and protection proceedings. This should stop young people being propelled into correctional institutions because of the combined influence of disciplinary and welfare factors.

What impact would this new way of thinking have on existing juvenile justice practices in Hong Kong?¹¹⁹ First, it should lead to an expansion of police cautioning. However, this expansion must be paralleled by the development of a monitoring system to protect against net widening. Second, it would need better co-operation between juvenile justice and youthwork agencies in the development of district-wide juvenile justice programmes.¹²⁰ Third, it would

¹¹⁷ Obviously one could question whether it is desirable to evaluate juvenile court sentencing practices in Hong Kong against Western standards. Certainly in many Chinese communities (for example China and Hong Kong) correctional institutions are not viewed in the same negative light as is currently the case in the West. However, the establishment of the Hong Kong juvenile justice system was originally based on the UK system. But whilst the latter has substantially changed over the past ten years (in line with the 1989 United Nations Convention on the Rights of the Child), very little critical thought has been given to its Hong Kong counterpart. This article is an attempt to open up such a critical debate.

¹¹⁸ Gray (note 67 above).

¹¹⁹ Many of the recommendations cited in this paragraph have also appeared in a recent research report. See Vagg et al (note 81 above). The Hong Kong government is currently considering the implementation of these recommendations.

¹²⁰ Such a proposal has been suggested in a recent review of youthwork services. See Working Party on Review of Children and Youth Centre Services, *Report on Review of Children and Youth Centre Services* (Hong Kong: Government Printer, 1994).

mean court-based social workers writing more selective reports, omitting moral judgements that could influence magistrates' decisions. Finally, for those young people who continue to appear before the courts consideration should be given to developing less disruptive and more constructive sentencing options. This envisages the expansion of community-based alternatives beyond the probation and community service orders which are all that are currently available.¹²¹

We may be over-emphasising the seriousness of juvenile crime in Hong Kong, dealing with it in an unnecessarily harsh manner, and unjustifiably interfering in young people's lives. Juveniles are also part of the community, and greater attention should be given to protecting their rights and reducing segregation by developing more community-based alternatives to tackle their criminal behaviour.

¹²¹ The Social Welfare Department has recently established a Community Support Service Scheme for convicted juvenile offenders, but this scheme is mainly a way of strengthening existing disposals, rather than offering an alternative, as it is targeted at young people currently on probation and ex-probation home and reformatory school inmates still under after-care supervision.